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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,774	07/07/1999	WILLIAM M. KLEINFELTER	3207/22	5725

29858 7590 03/09/2004

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EXAMINER

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ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 03/09/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/348,774
Filing Date: July 07, 1999
Appellant(s): KLEINFELTER, WILLIAM M.

Frederick Yu
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/10/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-49 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,950,630

Portwood et al.

9-1999

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,950,630 to Portwood et al.

As per claim 1, Portwood et al. teaches a computer implemented method for processing prescription data representing a plurality of prescription drugs, said method comprising the steps of:

--the claimed arranging received prescription data that corresponds to a first prescription drug into a new record of a predetermined format containing an identifier for identifying said patient and further containing a first name of said first prescription drug is met by the prescription information being entered and organized according to drug name, units, strength, prescription signature, refills, dosing mode and a date last administered to the patient (see: column 6, lines 50-54),

--the claimed accessing a plurality of pre-stored records of said predetermined format, each pre-stored record containing information on a plurality of prescription drugs previously prescribed for respective patients is met by the CPU (1, Fig. 4) that allows the patient prescription data or records to be quickly access as well as making and entering any changes to the already existing prescription (see: column 16, lines 47-57); and

--the claimed identifying said first prescription drug as a new therapy start for said patient if said first name is not substantially identical to said second name is met by the Generic Product

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Identifier (GPI) and National Drug Code (NDC) both used to determine the drug used by a patient and to determine a new recommend or continuing medical regimen (see: column 7, lines 56-67). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the calculation involved with prescribing duration for each new drug include a new therapy start.

Portwood et al. fails to explicitly teach the claimed comparing said identifier in said new record with each identifier located in the pre-stored records to find a matching pre-stored record associated with said patient and comparing said first name of said first prescription drug with a second name of a second prescription drug located in the found matching pre-stored record.

However, Portwood teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner considers the Prescribing Duration Check to include comparing the first name of a first prescription drug with the second name of a second prescription drug located in the found matching pre-stored record to determine if a new drug is being prescribed to a patient's regimen. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include comparing a first drug with a second drug to determine a new prescription within the method for processing prescription data as taught by Portwood with

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motivation of identifying the drugs in a patient's prescription thereby reducing the side effects caused be a reaction to certain drugs.

As per claim 2, Portwood et al. teaches determining whether types of said first and second names are brand or generic if said first name is not substantially identical to said second name, converting one of said first and second names to the type of the remaining name if the types are different, and ascertaining an equivalency between said first and second names based on the converted name is met by comparing the pharmaceutical information (existing prescription) and the patient prescription data (current prescription) which includes the use of the National Drug Code (NDC) and the Generic Product Identifier (GPI) to select the correct drug name needed to full the prescription (see: column 6, lines 50-61 and column 7, lines 56-67).

As per claim 3, Portwood et al. teaches collecting the pre-stored records over a predetermined time interval is met by the printing of several reports such as a prescription calendar and prescribed medical regimen that need to be collected and transmitted to the patient over the course of the treatment (see: column 16, lines 11-23).

As per claim 4, Portwood et al. teaches a predetermined format further contains a date of dispensing said prescription drug to said patient and a dosage of said prescription drug (see: column 6, lines 50-54).

As per claim 5, Portwood et al. teaches calculating a last day when said patient has taken said second prescription based on said date of dispensing and on said dosage if said first and last names are substantially identical, determining a length of time elapsed between said last day of taking said second prescription drug and a first day of dispensing said first prescription drug, and identifying said first prescription drug as newly prescribed for said patient if said length of time

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exceeds a predetermined time interval is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 5663).

As per claim 6, Portwood et al. teaches obtaining each pre-stored record for said patient, accessing a list of illnesses to determine each illness treatable by each respective prescription drug contained in said each pre-stored record, accessing said list of illnesses to determine an illness treatable by said first prescription drug identified as newly prescribed, and ascertaining whether said first prescription drug is a replacement for another prescription drug previously taken by said patient is met by the ability to access the patient prescription which includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

As per claim 7, Portwood et al. teaches calculating a last day when said patient has taken said another prescription drug based on said date of dispensing and on said dosage, determining a length of time elapsed between said last day of taking said another prescription drug and a first day of dispensing said first prescription drug, and identifying said first prescription drug as said replacement if said length of time does not exceed a predetermined time interval is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67).

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As per claim 8, Portwood et al. teaches said predetermined format further contains a prescriber name, a prescriber address, and a patient zip code (see: column 8, lines 27-29 and 3839).

As per claim 9, Portwood et al. teaches selecting every prescription drug identified as newly prescribed for each patient over a predetermined time interval, and sorting the selected prescription drugs according to at least one criterion selected from the following: a prescriber's name, a prescriber's address, a patient's zip code, a prescriber's specialty, a pharmaceutical sales territory, national-based reporting, ICD9 code is met by the patient prescription data which includes a prescriber's name (see: column 8, lines 27-29).

As per claims 10-18, they are rejected for the same the reasons set forth in claims 1-9.

As per claim 19, Portwood et al. teaches a computer-readable storage medium for storing a program code for, when executed, causing a computer to perform a method for processing prescription data representing a plurality of prescription drugs, said method comprising:

--the claimed arranging received prescription data that corresponds to a first prescription drug into a new record of a predetermined format containing an identifier for identifying said patient and further containing a first name of said first prescription drug is met by the prescription information being enter and organized according to drug name, units, strength, prescription signature, refills, dosing mode and a date last administered to the patient (see: column 6, lines 50-54 and column 7, lines 40-51);

--the claimed accessing a plurality of pre-stored records of said predetermined format, each pre-stored record containing information on a plurality of prescription drugs previously prescribed for respective patients is met by the CPU (1, Fig. 4) that allows the patient

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prescription data or records to be quickly access as well as making and entering any changes to the already existing prescription (see: column 16, lines 47-57 and column 7, lines 40-51); and

--the claimed identifying said first prescription drug as a new therapy start for said patient if said first name is not substantially identical to said second name is met by the Generic Product Identifier (GPI) and National Drug Code (NDC) both used to determine the drug used by a patient and to determine a new recommend or continuing medical regimen (see: column 7, lines 56-67 and column 7, lines 40-51). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the calculation involved with prescribing duration for each new drug include a new therapy start.

Portwood fails to explicitly teach the comparing said identifier in said new record with each identifier located in the pre-stored records to find a matching pre-stored record associated with said patient and comparing said first name of said first prescription drug with a second name of a second prescription drug located in the found matching pre-stored record.

However, Portwood teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner considers the Prescribing Duration Check to include comparing the first name of a first prescription drug with the second name of a second prescription drug located in the found

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matching pre-stored record to determine if a new drug is being prescribed to a patient's regimen. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include comparing a first drug with a second drug to determine a new prescription within the method for processing prescription data as taught by Portwood with motivation of identifying the drugs in a patient's prescription thereby reducing the side effects caused be a reaction to certain drugs.

As per claim 20, Portwood et al. teaches a computer implemented method for processing prescription data using a plurality of pre-stored prescription data records, each of which comprises a patient identifier identifying a patient and a drug identifier identifying a drug being prescribed to the identified patient of the respective record, the method comprising:

- the claimed receiving a first prescription data record comprising a patient identifier identifying a first patient and a drug identifier identifying a drug being prescribed to the first patient drug is met by the prescription information being entered and organized according to drug name, units, strength, prescription signature, refills, dosing mode and a date last administered to the patient (see: column 6, lines 50-54);

- the claimed determining whether the drug identifier of the matching pre-stored prescription data record is related to the drug identifier of the first prescription data record is met by comparing existing and current patient's prescription data which includes but not limited to patient name, drug name, unit and strength to determine the relationship between the stored data (existing) and the prescription data (current) (see column 6, lines 5-10 and column 6, lines 50-54);

--the claimed identifying the drug being prescribed to the first patient as a new therapy start for the first patient if the drug identifier of the first prescription data record is not related to the drug identifier of the matching pre-stored prescription data record is met by the Generic Product Identifier (GPI) and National Drug Code (NDC) both used to determine the drug used by a patient and to determine a new recommend or continuing medical regimen (see: column 7, lines 56-67). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the calculation involved with prescribing duration for each new drug include a new therapy start.

Portwood fails to explicitly teach the claimed comparing the patient identifier of the first prescription data record to the patient identifier of each of the plurality of pre-stored prescription data records to find a pre-stored prescription data record having a patient identifier matching the patient identifier of the first prescription data record.

However, Portwood teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner considers the comparing of a patient's prescription data including a patient name (identifier) and the calculation of prescribing duration (plurality of pre-stored prescription data records to find a match) as a process of checking for each new drug. Therefore, it would have

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been obvious to a person of ordinary skill in the art at the time the invention was made to include comparing of a patient identifier with pre-stored prescription data record to find a match within the method for processing prescription data as taught by Portwood with motivation of identifying the drugs in a patient's prescription thereby reducing the side effects caused by a reaction to certain drugs.

As per claim 21, Portwood et al. teaches the step of determining comprises identifying the drug identifier of the matching pre-stored prescription data record as being related to the drug identifier of the first prescription data record if the drug identifier of the matching pre-stored prescription data record matches the drug identifier of the first prescription data record. This feature is met by the comparing and tests of pharmaceutical data and patient data for underdosing and overdosing which indicates a relationship between the pre-stored prescription data record and the first prescription data (column 6, lines 50-67).

As per claim 22, Portwood et al. fails to explicitly teach a drug identifier is of one of two types, one type of drug identifier being an identifier to a brand name drug and the other type of drug identifier being an identifier to a generic drug corresponding to a brand name drug, and where the step of determining comprises:

--the claimed prior to the step of identifying, if the drug identifier of the matching pre-stored prescription data record and the drug identifier of the first prescription data record are not of the same type, converting either the drug identifier of the matching pre-stored prescription data record or the drug identifier of the first prescription data record to the other type of drug identifier.

However, Portwood teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner considers the comparing of a patient's prescription data including a patient name (identifier) and the calculation of prescribing duration (plurality of pre-stored prescription data records to find a match) as a process of checking for each new drug. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include comparing of a patient identifier with pre-stored prescription data record to find a match within the method for processing prescription data as taught by Portwood with motivation of identifying the drugs in a patient's prescription thereby reducing the side effects caused by a reaction to certain drugs.

As per claim 23, Portwood et al. teaches a database provides a correspondence between brand name drugs and their corresponding generic drugs, and where the step of converting comprises:

--the claimed drug identifier being conveyed is of the type that identifies a brand name drug, searching the database to find the generic drug corresponding to the brand name drug identified by the drug identifier being converted and modifying the drug identifier being converted to identify the found generic drug is met by the pharmaceutical database which uses the National Drug Code (NDC) and the Generic Product Identifier (GPI) to select the correct

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drug name needed to full the prescription indicating that brand name drugs are compared with generic (see: column 6, lines 50-61 and column 7, lines 56-67); and

--the claimed drug identifier being converted is of the type that identifies a generic drug, searching the database to find the brand name drug corresponding to the generic drug identified by the drug identifier being converted and modifying the drug identifier being converted to identify the found brand name drug is met by the pharmaceutical database which uses the National Drug Code (NDC) and the Generic Product Identifier (GPI) to select the correct drug name needed to full the prescription indicating that brand name drugs are compared with generic (see: column 6, lines 50-61 and column 7, lines 56-67).

As per claim 24, Portwood et al. teaches the claimed plurality of pre-stored prescription data records are collected over a predetermined time interval. This limitation is met by the printing of several reports such as a prescription calendar and prescribed medical regimen that need to be collected and transmitted to the patient over the course of the treatment (see: column 16, lines 11-23).

As per claim 25, Portwood et al. teaches plurality of pre-stored prescription data records further comprises a dispensing date on which the drug being prescribed of the respective record was dispensed and a drug dosage describing the dosage prescribed for the drug being prescribed of the respective record, and where the first prescription data record further comprises a dispensing date on which the drug being prescribed of the first prescription data record was dispensed, and where the method further comprises:

--the claimed drug identifier of the matching pre-stored prescription data record is related to the drug identifier of the first prescription data record, calculating a last day the drug being

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prescribed of the matching pre-stored prescription data record was taken based on the dispensing date and drug dosage for the drug being prescribed of the matching pre-stored prescription data record is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63);

--the claimed determining a length of time between the last day calculated and the dispensing date of the drug being prescribed of the first prescribed data record is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63); and

--the claimed identifying the drug being prescribed to the first patient as a new therapy start for the first patient if the length of time determined exceeds a predetermined time interval is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the calculation involved with prescribing duration for each new drug include a new therapy start.

As per claim 26, Portwood et al. teaches a computer implemented method for processing prescription data using a plurality of pre-stored prescription data records, each of which comprises a patient identifier identifying a patient and a drug identifier identifying a drug being prescribed to the identified patient of the respective record, the method comprising:

--the claimed receiving a first prescription data record comprising a patient identifier identifying a first patient and a drug identifier identifying a drug being prescribed to the first patient is met by the prescription information being entered and organized according to drug name, units, strength, prescription signature, refills, dosing mode and a date last administered to the patient (see: column 6, lines 50-54);

--the claimed identifying all the illnesses treatable by the drug being prescribed of the first prescription data record is met by the ability to access the patient prescription that includes a description of the patient's symptoms and drugs used to combat those symptoms (see: column 16, lines 41-43 and column 16, lines 54-58);

--the claimed for each matching pre-stored prescription data record, identifying all the illnesses treatable by the drug being prescribed of the respective pre-stored prescription data record is met by the ability to access the patient prescription which includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58); and

--the claimed determining whether the drug being prescribed of the first prescription data record is a therapy switch based on the illnesses treatable by the drug being prescribed of the first prescription and the illnesses treatable by any drug being prescribed of any of the matching pre-stored prescription data records is met by the ability to access the patient prescription which includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

Portwood fails to explicitly teach the claimed comparing the patient identifier of the first prescription data record to the patient identifier of each of the plurality of pre-stored prescription data records to find all pre-stored prescription data records having a patient identifier matching the patient identifier of the first prescription data record.

However, Portwood teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner considers the comparing of a patient's prescription data including a patient name (identifier) and the calculation of prescribing duration (plurality of pre-stored prescription data records to find a match) as a process of checking for each new drug. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include comparing of a patient identifier with pre-stored prescription data record to find a match within the method for processing prescription data as taught by Portwood with motivation of identifying the drugs in a patient's prescription thereby reducing the side effects caused by a reaction to certain drugs.

As per claim 27, Portwood et al. teaches a database lists the illnesses treatable by drugs, and where the step of identifying all the illnesses treatable by a drug being prescribed comprises:

--the claimed given drug being prescribed, searching the database to find the given drug is met by the ability to access the patient prescription which includes a description of the

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patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58); and

--the claimed identifying all the illnesses listed in the database as treatable by the found drug is met by the ability to access the patient prescription which includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

As per claim 28, Portwood et al. teaches each of the plurality of pre-stored prescription data records further comprises a dispensing date on which the drug being prescribed of the respective record was dispensed and a drug dosage describing the dosage prescribed for the drug being prescribed of the respective record, and where the first prescription data record further comprises a dispensing date on which the drug being prescribed of the first prescription data record was dispensed, and where the step of determining comprises:

--the claimed identifying one of the plurality of pre-stored prescription data records where the drug being prescribed of the identified record treats an illness that the drug being prescribed of the first prescription data record also treats is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63);

--the claimed calculating a last day the drug being prescribed of the identified record was taken based on the dispensing date and drug dosage for the drug being prescribed of the

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identified record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67);

--the claimed determining a length of time between the last day calculated and the dispensing date of the drug being prescribed of the first prescribed data record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67); and

--the claimed identifying the drug being prescribed to the first patient as a therapy switch for the first patient if the length of time determined does not exceed a predetermined time interval is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67).

As per claims 29-36 and 39-46, they are rejected for the same reason set forth in claims 20-27.

As per claim 37, Portwood et al. teaches means for determining identifies the drug being prescribed of the first prescription data record as a therapy switch if any illness treatable by the drug being prescribed of the first prescription data record matches any illness treatable by any drug being prescribed of any of the matching pre-stored prescription data records. This limitation is met by the ability to access the patient prescription that includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

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As per claim 38, Portwood et al. teaches each of the plurality of pre-stored prescription data records further comprises a dispensing date on which the drug being prescribed of the respective record was dispensed and a drug dosage describing the dosage prescribed for the drug being prescribed of the respective record, and where the first prescription data record further comprises a dispensing date on which the drug being prescribed of the first prescription data record was dispensed, and where the means for determining comprises:

--the claimed means for identifying one of the plurality of pre-stored prescription data records where the drug being prescribed of the identified record treats an illness that the drug being prescribed of the first prescription data record also treats is met by the patient prescription data which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63),

--the claimed means for calculating a last day the drug being prescribed of the identified record was taken based on the dispensing date and drug dosage for the drug being prescribed of the identified record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67);

--the claimed means for determining a length of time between the last day calculated and the dispensing date of the drug being prescribed of the first prescribed data record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67); and

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--the claimed means for identifying the drug being prescribed to the first patient as a therapy switch for the first patient if the length of time determined does not exceed a predetermined time interval is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67).

As per claimed 47, Portwood et al. teaches the step of determining comprises identifying the drug being prescribed of the first prescription data record as a therapy switch if any illness treatable by the drug being prescribed of the first prescription data record matches any illness treatable by any drug being prescribed of any of the matching pre-stored prescription data records. This limitation is met by the ability to access the patient prescription that includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

As per claim 48, Portwood et al. teaches each of the plurality of pre-stored prescription data records further comprises a dispensing date on which the drug being prescribed of the respective record was dispensed and a drug dosage describing the dosage prescribed for the drug being prescribed of the respective record, and where the first prescription data record further comprises a dispensing date on which the drug being prescribed of the first prescription data record was dispensed, and where the step of determining comprises:

--the claimed identifying one of the plurality of pre-stored prescription data records where the drug being prescribed of the identified record treats an illness that the drug being prescribed of the first prescription data record also treats is met by the patient prescription data

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which includes the length of therapy, drug name, date and time of dosage and patient history all used to determine and calculate the patient prescribed regimen (see: column 6, lines 50-67 and column 11, lines 56-63);

--the claimed calculating a last day the drug being prescribed of the identified record was taken based on the dispensing date and drug dosage for the drug being prescribed of the identified record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67);

--the claimed determining a length of time between the last day calculated and the dispensing date of the drug being prescribed of the first prescribed data record is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67); and

--the claimed identifying the drug being prescribed to the first patient as a therapy switch for the first patient if the length of time determined does not exceed a predetermined time interval is met by calculating the DoseUnit and IndividualDose of the patient to determine the dosage, duration and length of therapy between prescriptions (see: column 11, lines 56-66 and column 6, lines 50- 67).

As per claimed 49, Portwood teaches the step of determining comprises identifying the drug being prescribed of the first prescription data record as a therapy switch if any illness treatable by the drug being prescribed of the first prescription data record matches any illness treatable by any drug being prescribed of any of the matching pre-stored prescription data

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records. This limitation is met by the ability to access the patient prescription that includes a description of the patient's symptoms and drugs used to combat those symptoms as well as all the stored patient prescription data from any previous treatments (see: column 16, lines 41-43 and column 16, lines 54-58).

(11) *Response to Argument*

In the Appeal Brief filed 3 November 2003, Appellant makes the following arguments:

(A) Portwood fails to teach or suggest comparing an identifier in a new (first) record with each identifier located in the pre-stored (second) records to a matching pre-stored record associated with patient in claim 1.

(B) Portwood fails teach or suggest identifying said first prescription drug as a new therapy start for said patient if said first name is not substantially identical to said second name in claim 1.

(C) Portwood fails teach or suggest comparing and determining whether the drug being prescribed of the first prescription data record is a therapy switch in claim 26.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that the Portwood reference teaches comparing patient's prescription data which includes but not limited to patient name, drug name, unit and strength (see column 6, lines 5-10 and column 6, lines 50-54) as well as comparing patient's prescription data including the duration and dosage range of a administered drug as transmitted by the reporting unit (see: column 3, lines 5-10). In addition, Portwood teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). The Examiner

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considers the comparing of a patient's prescription data to include a patient's name (identifier) and the calculation of prescribing duration for each new drug to include the process of checking each new drug prescribed for an identified patient. Furthermore, Portwood teaches that the patient prescription data includes the patient's identification code (e.g. social security number) (see: column 8, lines 18-19). This clearly indicates that once the patient is identified using the patient identifier (social security number), their prescription is compared with newly inputting drug information to determine if a new drug is being prescribed for that particular patient.

Response to Argument (B):

In response to the second argument, the Examiner respectfully submits the reference of Portwood teaches that pharmaceutical information is compared to patient data and prescription to ascertain if any drug interaction problem exist (see: column 6, lines 50-62). Portwood also teaches that a series of test (comparisons) are performed on the prescription that include but no limited to underdosing, overdosing, length of therapy, drug—drug interaction, and prior adverse reactions (see: column 6, lines 61-66). Furthermore, Portwood teaches a Generic Product Identifier (GPI) and National Drug Code (NDC) both used to determine the drug used by a patient and to determine a new recommend or continuing medical regimen (see: column 7, lines 56-67). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the tests conducted on drug—drug interaction and prior adverse reactions of a particular patient to a prescribed drug include a determination using the GPI and NDC to determine whether the drug being prescribed is a new recommended prescription (new therapy start) or a continuing prescription.

Response to Argument (C):

In response to the third argument, the Examiner respectfully submits that the Appellant indicated claims 1-49 are treated as a single group and claim 1 is the broadest claim including similar limitations as claim 26. Therefore, the Examiner is only responsible for addressing the broadest claim since all claims stand or fall together. With respects to comparing and determining whether a drug being prescribed from a first prescription data record is a therapy switch. Again, the Examiner maintains that Portwood teaches pharmaceutical information which is compared to patient data and prescription to ascertain if any drug interaction problem exist (see: column 6, lines 50-62). Portwood also teaches that a series of test (comparisons) are performed on the prescription that include but no limited to underdosing, overdosing, length of therapy, drug—drug interaction, and prior adverse reactions (see: column 6, lines 61-66). Furthermore, Portwood teaches a Generic Product Identifier (GPI) and National Drug Code (NDC) both used to determine the drug used by a patient and to determine a new recommend or continuing medical regimen (see: column 7, lines 56-67). In addition, Portwood further teaches a Prescribing Duration Check to calculate the prescribing duration for each new drug to be prescribed in a medical regimen (see: column 14, lines 40-58). This suggests that the tests conducted on drug—drug interaction and prior adverse reactions of a particular patient to a prescribed drug include a determination using the GPI and NDC to determine whether the drug being prescribed is a new recommended prescription (new therapy start) or a continuing prescription.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,


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January 23, 2004

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